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Before the
FEDERAL COMMUNICATIONS COMMISSION
 Washington, DC 20554

SEP 25 2002

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)

Amendment of Section 73.622(b))

Table of Allotments)

Digital Television Broadcast Stations)

(Kingston, New York))

MM Docket No. 00-121

RM-9674

To: The Commission

REPLY TO OPPOSITION TO APPLICATION FOR REVIEW

1. WKOB Communications, Inc. ("WKOB"), licensee of WKOB-LP, New York, New York (Facility ID 51441), hereby replies to the Opposition filed by WRNN-TV Associates Limited Partnership ("WRNN-TV") on September 15, 2002, in the above-referenced proceeding. WKOB seeks review by the full Commission of the Video Services Division's decision to change the digital television allotment for WRNN-DT, Kingston, New York, from Channel 21 to Channel 48. As shown herein, WRNN-TV's Opposition should be dismissed, as it was filed late. Even if considered on its merits, the Opposition misses the basic point of WKOB's Application for Review and thus fails to rebut the fact that the Video Division failed to follow the clear Commission directive of analyzing any proposed DTV channel reallocation for impact on low power television station operations. Instead, WRNN-TV rehashes arguments that because WKOB is not a Class A station, it does not deserve any protected status. Such a claim of primary status has never been argued, and therefore WRNN's opposition is baseless.

I. WRNN-TV's Opposition Should Be Dismissed as Late-Filed.

2. Under Section 1.115 of the Commission's Rules, oppositions to applications for review must be filed within 15 days after the application for review was filed. WKOB filed its Application for Review on August 28, 2002. Using the computation of time provisions under

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Section 1.4, WRNN's Opposition was due September 12, 2002.¹ However, it was not filed until September 13, 2002. The Commission is clear that when it comes to filing deadlines, filing even one day late results in dismissal. *See, e.g., Panola Broadcasting Co.*, 68 F.C.C.2d 5333 (1978), *Mobile Radio Services*, DA 02-179 (released January 22, 2002). Therefore, without filing a request for filing late, or providing any explanation for its late filing, the opposition must be dismissed.

II. WRNN Fails To Rebut WKOB's Basic Point that the Video Division Failed to Follow a Clear Commission Directive.

3. Even if WRNN-TV's opposition is reviewed on its merits, it does not rebut the issues raised by WKOB. WRNN-TV's characterization of WKOB as an LPTV blocking the transition to digital operations are simply an attempt to deflect WKOB's meritorious legal point by invoking a politically high priority, but irrelevant, Commission policy. WKOB has never argued that WRNN should not have a DTV channel or should not be able to make a timely transition and provide DTV service. On the contrary, WRNN has DTV Channel 21 available to it and is free to use it at any time.

4. WRNN also attempts to distort WKOB's argument into a position that there are only two possibilities: (a) a DTV station has priority, or (b) an existing LPTV station has priority. It then states that priority is given to only Class A stations. While WKOB-LP may ultimately be found qualified for Class A status, WKOB's point has never been the stark "either/or" proposition that WRNN claims. WKOB's basic point is not that LPTV stations are entitled to priority but that they are entitled to serious consideration and may not be summarily ignored.

¹ There is no additional time allowed for service by mail when a pleading period is more than 10 days.

The Video Division's decision did not give proper consideration to WKOB-LP's situation, and the only way it could get to that result was to misinterpret the Class A rules.

5. As WKOB demonstrated in its Application for Review, the Class A rules gave priority to Class A stations under certain circumstances, but those rules did not overturn the explicit directive of the full Commission that a balancing process be undertaken and that proposals for changes in the DTV allotment table be permitted to destroy LPTV stations only in exceptional circumstances. WKOB has argued strenuously and meritoriously that there are no such exceptional circumstances here -- that the only public interest benefit of the WRNN proposal is to allow WRNN-DT to serve more people by moving closer to the already fully served New York City market.

6. WRNN has not rebutted WKOB's point that there was a failure by the Video Division to follow the explicit Commission directive to analyze and to evaluate the impact of the proposed WRNN digital channel change on LPTV operations -- an impact that is undisputedly disastrous in this case. Instead, the Video Division and WRNN take the erroneous position that because WKOB has not been granted a Class A license, WRNN is free to do whatever it wants without any consideration of the devastating impact the WRNN relocation would have on WKOB-LP.

7. WRNN itself has not been consistent in its approach to LPTV and in fact did not take a hard line that LPTV must be totally disregarded until its proposal was attacked. In its Supplement to Petition for Rule Making in this proceeding, filed April 30, 1999, WRNN evaluated the impact of its proposals on LPTV stations and explicitly acknowledged the


Commission's policy of preserving LPTV service² -- the same policy that was ignored by the Video Division in this case.

8. WKOB is asking only that the full Commission direct the Video Division to conduct a full and proper analysis of the impact the WRNN digital reallocation would have. Moreover, that evaluation must be based on the actual, rather than the theoretical, WRNN proposal -- the facility that WRNN plans to build under its construction permit. To ignore actual facts in undertaking a balancing of factors in the public interest is a head-in-the-sand approach that is seriously arbitrary and capricious and will not withstand judicial scrutiny should that become necessary. As WKOB has demonstrated time and again throughout this proceeding, no rational analysis can conclude that allowing WRNN to become a New York City station and to extinguish WKOB's operation, particularly after an auction, is in the public interest.

9. Accordingly, WKOB requests that the Commission dismiss WRNN's opposition as both untimely and without merit, and reverse the Video Division's decision to substitute Channel 48 for 21 as the digital channel for WRNN-TV.

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Respectfully submitted,



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September 25, 2002

² It should be noted that WRNN did not update its analysis after the grant of the WKOB-LP Channel 48 construction permit, although it had an ample opportunity to do.

CERTIFICATE OF SERVICE

I, Daniella Mattioli Knight, do hereby certify that I have, this 25th day of September, 2002, caused to be sent by first class United States mail, postage prepaid, a copy of the foregoing "Reply to Opposition to Application for Review" to the following:

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